

Appl. No. : **10/719,547**
Filed : **November 21, 2003**

AMENDMENTS TO THE DRAWINGS: NONE

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REMARKS

Claims 1-12 and 16 are pending in this application. Responsive to Restriction Requirement dated 21 Feb 2006, Claims 13-15, and 17-32 are canceled without prejudice as being drawn to non-elected subject matter, and Claim 16 amended to conform thereto. Claim 1 has been amended to make explicit that which was implicit in the claim. Support for the amendment is found throughout the specification, for example, at Table 20, pp. 109-110 and Table 37, pp. 125-126. Reexamination and reconsideration of the application, as amended, are respectfully requested.

A. Compliance with 37 CFR 1.84

The issue is whether Figures 5 and 8 meet the standards for drawings when the black and white photographs were apparently scanned into the electronic file wrapper rather than the photographs themselves being made of record. 37 CFR 1.84 authorizes black and white photographs to be permitted in utility patent applications. Unfortunately, the scanning of the photographs into the electronic file wrapper apparently renders them illegible. The photographs should themselves be made of record. Applicant respectfully requests that the photographs be treated as "artifacts" and made of record themselves rather than being scanned into the electronic file wrapper so that Figures 5 and 8 will be found to be legible and thus to meet the standards for drawings.

B. Compliance with 37 CFR 1.821

The issue is whether Appendices 1-4 meet the requirements for nucleotide and/or amino acid sequence disclosures in patent applications when the sequence identifiers appear in the Brief Description of the Appendices, pp. 9-10. 37 CFR 1.821 necessitates that patent applications that contain disclosures of nucleotide and/or amino acid sequences shall conform with the requirements to disclose the information in a paper and electronic Sequence Listing and each sequence must be assigned a separate sequence identifier. Where the description of a patent application discusses a nucleotide and/or amino acid sequence, reference must be made to the sequence by use of the sequence identifier. Here, the nucleotide and/or amino acid sequences of Appendices 1-4 conform with the requirements to disclose the information in a paper and electronic Sequence Listing. Additionally, each sequence has been assigned a separate sequence identifier and a reference to the sequences has been made by use of the sequence identifiers,

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because the sequence identifiers appear in the Brief Description of the Appendices, pp. 9-10. The conclusion is Appendices 1-4 meet the requirements for nucleotide and/or amino acid sequence disclosures in patent applications.

C. Compliance with 35 USC 112, second paragraph

The issue is whether the claims are in compliance with 35 USC, second paragraph, as being definite for particularly pointing out and distinctly claiming the subject matter that the applicant regards as the invention. The Patent Office takes the position that Claim 1 references a flavivirus with a particular phenotype but only discusses genotypic changes to the virus. The Patent Office holds that the precise phenotype of the virus is not readily manifest. The Patent Office proposes that an appropriate amendment be made to the claim language (i.e., A temperature-sensitive, host-range restricted mutant flavivirus, designated mutant 200, 201, wherein said virus comprises charge-cluster-to-alanine mutations at amino acids 2687 and 2688 of the NS5 gene ...). Claim 1 has been amended to make explicit that which was implicit in the claim. Applicant has proceeded as the Patent Office proposed. The conclusion is the claims are in compliance with 35 USC, second paragraph.

CONCLUSION

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of all outstanding rejections are respectfully requested. Allowance of the claims at an early date is solicited. If any points remain that can be resolved by telephone, the Examiner is invited to contact the undersigned at the below-given telephone number.

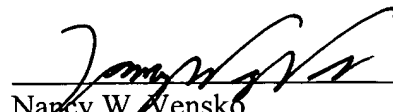
Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: _____

10/15/06

By: _____


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